Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 80-244

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

W. C. ALDRIDGE,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

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QUESTIONS PRESENTED

1.

Whether an affidavit in support of a search warrant is legally sufficient if based on the reliable admissions against penal interest of two named informers.

2.

Whether the seizure of items named in a valid search warrant is rendered improper because other, unnamed items were seized in an arguably illegal manner during the same search, if said unnamed items were never introduced into evidence at trial.

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SUMMARY OF ARGUMENT

In his petition for a writ of certiorari, Petitioner argues two grounds in support of his contention that his conviction should be reversed.

First, Petitioner contends that an affidavit in support of a search warrant based on admissions against penal interest by named informers is insufficient as a matter of law. Petitioner's argument has been refuted previously by several courts, including this one. An affidavit based on admissions against penal interest contains the necessary element of reliability and is legally sufficient to support the issuance of a search warrant. In addition, on the facts of this case, the admissions against penal interest contained in the

search warrant affidavit were corroborated by independent evidence.

Petitioner's second contention is that the search in the instant case was rendered invalid because the police exceeded the permissible scope of the search warrant. This contention is also without merit. The search warrant on its face was valid, and the items named in the warrant were seized pursuant to its terms. The additional items seized were not introduced into evidence against Petitioner at trial, so even if it is assumed that they were seized illegally, no harm has resulted to Petitioner, and his conviction at issue in the instant case should not be reversed.

STATEMENT OF THE CASE

On May 12, 1977, Petitioner was indicted by the Bibb County Grand Jury for the offense of theft by receiving stolen property. Petitioner pled not guilty, and on September 12, 1978 was tried by a jury. He was found guilty and was sentenced to serve three years in prison.

Following the denial of his motion for a new trial, Petitioner appealed his conviction to the Georgia Court of Appeals. On February 15, 1980, said court unanimously affirmed Petitioner's conviction. Aldridge v. State, 153 Ga. App. 744, ___ S.E.2d ___ (1980). Certiorari was sought from and was denied by the Georgia Supreme Court.

Petitioner's petition for a writ of certiorari was docketed in this Court on August 18, 1980.

STATEMENT OF FACTS

In the early morning hours of April 20, 1977, the boat and motor business of Charles Guy Wood, Jr., was burglarized. (Trial transcript, hereinafter "T", at page 24). The burglars stole two outboard motors, a large twenty horsepower Chrysler motor and a smaller Honda motor. (T. 25, 26). The Chrysler motor was worth approximately $895.00; the Honda motor was worth approximately $595.00. (T. 27).

Sergeant A. J. Mathern, Jr., was the detective assigned to the case. His investigation disclosed the names of three suspects, Lafayette Green, Joe Reed, and Matthew Heath. All three admitted committing the burglary. (T. 53, 54), and

Reed and Heath stated that they had sold the motors to an individual who resided at 644 Main Street. (T. 55). Heath had received a $25.00 check and a tape player in partial payment for the motors. (T. 55).

In response to this information, Sergeant Mathern obtained a search warrant. (T. 56). The warrant was executed when no one was home. The motors were found in a back bedroom of the house. (T. 57). After the search, an arrest warrant was obtained for Petitioner and he was arrested.

Prior to trial, Petitioner filed a motion to suppress the two motors, contending that the search warrant was invalid for basically the same reasons as asserted here. [1/]

[1/] There was never a formal hearing on the motion to suppress. By mutual agreement of the State and the defense, the preliminary hearing transcript was used as the basis for the motion to suppress. Said transcript will be cited in this brief as "H.T."

At the hearing, Sergeant Mathern testified that upon obtaining the statements from Reed and Heath, he had sworn out an affidavit and had obtained a search warrant. (H.T. 3, 4). In executing the warrant, he had found the two motors in a back bedroom of the house, and had also found numerous other items which appeared to have altered serial numbers. (H.T. 6, 7). Sergeant Mathern had seized all of said items even though they had not been named in the warrant. (H.T. 9-12). The trial court denied Petitioner's motion to suppress.

Several witnesses testified for the State at trial. The victim and the two police officers essentially testified as to the details of the burglary. In addition, two of the burglars, Lafayette Green and Joe Reed, testified for the

State, but neither testified pursuant to a grant of immunity or a negotiated plea. (T. 93, 138, 139). Both freely admitted committing the burglary. (T. 78, 83, 126).

Lafayette Green testified that the three burglars had gone to Petitioner's house in the middle of the night to sell the motors. (T. 84). They negotiated a $200.00 price for the motors, even though it was recognized that the true value of the motors was closer to $1500.00. (T. 88). In partial payment, Petitioner gave Matthew Heath a check for $25.00 and a tape deck. (T. 88). Joe Reed's testimony essentially corroborated Green's. (T. 133-134). Both witnesses positively identified Petitioner. (T. 93, 140).

Petitioner testified in his own behalf, claiming that the two motors were nothing more than security for a loan of $200.00. (T. 155). Petitioner further explained the $25.00 check as an advance for "drinking money". (T. 155). Following his trial, Petitioner was found guilty of theft by receiving stolen property and he was sentenced to three years in prison.

REASONS FOR NOT GRANTING THE WRIT

A. THE AFFIDAVIT IN SUPPORT OF THE SEARCH WARRANT IN THE INSTANT CASE WAS LEGALLY SUFFICIENT BECAUSE IT WAS BASED ON THE RELIABLE ADMISSIONS AGAINST PENAL INTEREST OF TWO NAMED INFORMERS.

It is undisputed that the search warrant affidavit in the instant case was based on the admissions against penal interest of two of the three burglars, Joe Reed and Matthew Heath. In a nutshell, in their admissions, Reed and Heath stated that they had taken two outboard motors in the burglary and had sold them to a man residing at 644 Main Street. They further stated that, in partial payment, the man had given them a check for $25.00. 2/

2/ The search warrant affidavit, in its entirety, is contained as an appendix to Petitioner's brief. It will not be independently reproduced here.

In his petition, Petitioner contends that the admissions of Reed and Heath were insufficient as a matter of law to support the issuance of the search warrant. This contention is without merit. It is well settled that the validity of a search warrant affidavit is determined by a two-pronged test. First, the affidavit must detail the underlying circumstances which indicate the existence of criminal behavior. Second, the affidavit must show why said evidence of underlying circumstances is reliable. Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964); Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969).

Petitioner cannot seriously contend that the first prong of the test is not satisfied

by the affadavit. It is clear that the admissions of Reed and Heath indicated that criminal behavior, to wit: the receipt of stolen property, had taken place at 644 Main Street. The only issue is whether the affidavit, by its terms, contained sufficient information to establish the reliability of the information.

The admissions of Reed and Heath are reliable as a matter of law simply because they were adverse to the informers' penal interest. The fact that such statements show the requisite reliability to support a search warrant was established by this Court in United States v. Harris, 403 U.S. 573, 91 S.Ct. 2075, 29 L.Ed.2d 723 (1971), in which it was stated:

> "People do not lightly admit a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility - sufficient at least to support a finding of probable cause to search .... [H]ere the informant's admission that over a long period and currently he had been buying illicit liquor on certain premises, itself and without more, implicated that property and furnished probable cause to search." 403 U.S. at 583-584.

Harris has been cited by numerous courts for the proposition that an informer's admissions against penal interest are sufficient to establish reliability and thus support the issuance of a search warrant. See United States v. Long, 449 F.2d 288 (8th Cir. 1971), cert. denied sub nom Tocco v. United States, 405 U.S. 974, 92 S.Ct. 1191, 31 L.Ed.2d 247 (1972); United States v. Golay, 402 F.2d 182 (8th Cir. 1974); United States v. Rosenbarger,

536 F.2d 715 (6th Cir. 1976), cert. denied, 431 U.S. 965, 97 S.Ct. 2920, 53 L.Ed.2d 1060 (1977); Cf. United States ex rel. DiRienzo v. Yaeger, 443 F.2d 228 (3rd Cir. 1971); United States v. Hunley, 567 F.2d 822 (8th Cir. 1977). The three cases cited by Petitioner in support of his contention [3] are not factually in point.

On the basis of the aforementioned precedents, it is clear that the affidavit in issue in the instant case was legally sufficient. Petitioner's contentions to the contrary are without merit.

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[3] Chin Kay v. United States, 311 F.2d 317 (9th Cir. 1962); Sykes v. United States, 312 F.2d 232 (8th Cir. 1963); Baysden v. United States, 271 F.2d 325 (4th Cir. 1959).

B. THE SEIZURE OF THE TWO BOAT MOTORS WAS PROPER.

It is undisputed that, when he executed the search warrant, Sergeant Mathern found the two boat motors on the premises. (H.T. 6). It is also undisputed that, during the course of the search, Sergeant Mathern also seized numerous other items which he felt were the fruits of criminal activity because of their nature and quantity and the fact that numerous items had altered serial numbers. (H.T. 7, 9-12) Petitioner contends that the seizure of items not named in the search warrant was improper and that the seizure of the boat motors was tainted to the extent that their seizure should also be deemed violative of Petitioner's rights under the Fourth Amendment.

Petitioner's argument is wholly without merit. Even assuming that the seizure of the unnamed items was improper, it is undisputed that none of the items were introduced into evidence at Petitioner's trial, and they were not even mentioned during the course of the testimony. Consequently, any alleged infringement on Petitioner's rights which resulted from the seizure of the unnamed items had absolutely no bearing whatsoever on the conviction at issue in the instant case, and therefore no reversal is warranted. To hold otherwise would be to expand the coverage of the exclusionary rule in an unprecedented and unnecessary fashion.

CONCLUSION

Since the affidavit which supported the search warrant was legally sufficient, the search was proper. Since the only items used against Petitioner at trial were the items named specifically in the search warrant, the seizure was proper. There has been no infringement of Petitioner's rights under the Fourth Amendment so as to warrant a reversal of his conviction. Consequently, Respondent respectfully requests that this Court deny the petition for a writ of certiorari.

Respectfully submitted,

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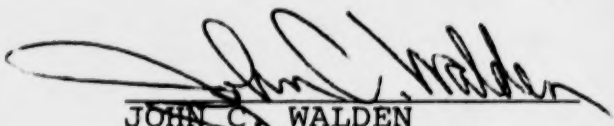

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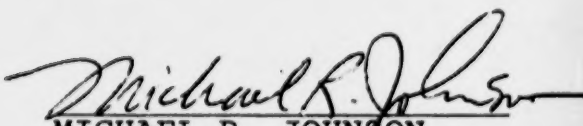

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CERTIFICATE OF SERVICE

I. John C. Walden, Counsel of Record for the Respondent, and a member of the Bar of the Supreme Court of the United States, certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief for Respondent in Opposition upon Petitioner's attorney by depositing a copy of same in the United States mail, with proper address and adequate postage to:

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This the 17th day of September, 1980.

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